IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

THURSDAY, THE 12TH JULY 2007 / 21ST ASHADHA 1929

WP(C).No. 22204 of 2006(R)

OS.42/2006 of SUB COURT, THIRUVALLA

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PETITIONER:

STATE BANK OF INDIA,
THIRUVALLA BRANCH, THIRUVALLA,
REPRESENTED BY ITS ASSISTANT GENERAL MANAGER.

BY ADV. SRI.P.V.SURENDRANATH
SRI.V.A.ABDUL JALEEL

RESPONDENTS:

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1. IDIKKULA EPAN,
PANDRANDIL HOUSE, AZHAYIDATHUCHIRA POST,
THIRUVALLA.

2. K.S.SIVAPRASAD,
PRASANTH BHAVAN, PERINGARA POST,
THIRUVALLA.

3. RADHAMANI AMMA, W/O. SIVAPRASAD,
PRASANTH BHAVAN, PERINGARA POST,
THIRUVALLA.

4. ABRAHAM EPAN, C/O. VALSAMMA BIJU,
POST BOX NO.30, P.C.620,
SUMAIL, SULTHANATE OF OMAN.

5. STATE OF KERALA, REPRESENTED BY
ITS CHIEF SECRETARY, SECRETARIAT,
THIRUVANANTHAPURAM.

R1 BY ADV. SRI.G.UNNIKRISHNON
R2 & 3 BY ADV SRI.MVS.NAMBOOTHIRY
R5 BY GOVT. PLEADER SMT. BINDU

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 12/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONERS EXTS:

EXT.P1: A TRUE COPY OF THE TITLE DEED NO: 90 DT.14.1.1993 DEPOSITED BY THE RESPONDENTS 2 &3 WITH THE PETITIONER BANK

EXT.P2: -DO- OF THE E.M. CONFIRMATION LETTER DT. 1.12.2000

EXT.P3: -DO- OF THE NOTICE DT.24.8.2005 ISSUED BY THE ASST. GENERAL MANAGER, THE AUTHORISED OFFICER

EXT.P4: -DO- OF THE POSSESSION NOTICE DT.9.2.2006 PUBLISHED IN MATHRUBHOOMI DAILY DT. 11.2.2006

EXT.P5: -DO- OF THE NOTICE DT.23.2.2006 U/S. 13(4) OF THE SECURITISATION ACT R/W SUB RULE 6 OF RULE 8 OF THE SECURITY INTEREST (ENFORCEMENT) RULES

EXT.P6: -DO- OF THE SALE NOTICE PUBLISHED IN MATHRUBHOOMI DAILY DT. 26.2.2006

EXT.P7: -DO- OF THE PLAINT IN O.S.42/2006 FILED BEFORE THE SUB COURT, THIRUVALLA

EXT.P8: -DO- OF THE NOTICE DT.23.2.2006 ISSUED ON BEHALF OF THE 1ST RESPONDENT AND 4TH RESPONDENT

EXT.P9: -DO- OF THE REPLY LETTER ISSUED BY THE BANK ON 7.3.2006

EXT.P10: -DO- OF THE AFFIDAVIT FILED BEFORE THE SUB COURT, THIRUVALLA IN O.S.42/2006

EXT.P11: -DO- OF THE I.A.233/2006 IN O.S.42/2006 FILED BEFORE THE HON'BLE SUB COURT, THIRUVALLA

EXT.P12: -DO- OF THE INJUNCTION ORDER DT.9.3.2006 I.A.233/2006 IN O.S.42/2006 SERVED ON THE PETITIONERS

EXT.P13: -DO- OF THE JUDGMENT IN W.P(C) 10208/2006 DT.4.4.2006 PASSED BY THE HON'BLE HIGH COURT OF KERALA

EXT.P14: -DO- OF THE OBJECTION SUBMITTED BY THE PETITIONER IN O.S.42/2006

EXT.P15: -DO- OF THE ORDER DT.4.7.2006 IN O.S.42/2006 ON THE FILE OF THE SUB COURT, THIRUVALLA

jj /TRUE COPY/

P.A. TO JUDGE

M.N.KRISHNAN, J.

WP(C)No.22204 OF 2006 R

Dated this the 12th July, 2007.

JUDGMENT

This writ petition is filed challenging the order of the learned Subordinate Judge, Thiruvalla in O.S.42/06. The point that arose for consideration before the learned Sub Judge was regarding the jurisdiction of the civil court in deciding the issue involved in the matter. A reference to the relief sought for will be relevant for a proper disposal of the case. On behalf of the fifth defendant, the plaintiff has sought a declaration to the effect that he is entitled to hold the property described as items 1 and 2 in the plaint schedule and that the action taken by defendants 3 and 4 against D1 and D2 under the Securitisation & Reconstruction of Financial Assets & Enforcement of Security Interest Act, 2002 is not valid and binding on him and for a consequential relief of mandatory injunction. There cannot be any dispute that defendants 3 and 4 had proceeded under Section 13 of the Act. Now the contention is that the authorities do not have the right to proceed under the Act and any action taken will not be binding on the fifth defendant who, according to him, is a bonafide purchaser of the property. As stated by me earlier, when an action is initiated rightly or wrongly

under Section 13 of the Act any person aggrieved by the said Act or the authority is not left without any remedy. Section 17 of the Act specifically states that any person (including borrower), aggrieved by any of the measures referred to in sub-section (4) of Section 13 taken by the secured creditor or his authorised officer under this Chapter may prefer an appeal to the Debts Recovery Tribunal having jurisdiction in the matter within forty five days from the date on which such measure had been taken. There cannot be any dispute that the present plaintiff in the suit is a person who is aggrieved by the measures taken by the secured creditor under Section 13 of the Act. When steps or decisions are taken by such a person the person aggrieved is competent to file an appeal under Section 17 of the Act. The order 'any person' would take the present plaintiff who represents fifth defendant as well because he is a person who is really aggrieved by the order of the securitisation officer which according to him, affects his right in the property. Now a reference to Section 34 also can be done. Under Section 34 no civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which a Debts Recovery Tribunal or the Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any court

or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act or under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993. So, Section 34 envisages a situation when a person aggrieved by an order under Section 13 is given a right to ventilate his grievance under Section 17 before the Debts Recovery Tribunal and the Debts Recovery Tribunal alone. Then Section 34 will directly come into play and there is express bar of jurisdiction provided under that Section. So far as the present case is concerned, as stated earlier, all these ingredients are satisfied. (i) The plaintiff, representing fifth defendant in the suit is a person aggrieved by the order or by the measures taken. (ii) He is a person who is competent under Section 17 of the Act to move before the Debts Recovery Tribunal to ventilate his grievance. (iii) When such a provision is there the jurisdiction of the civil court is barred.

2. I find that the learned Subordinate Judge has taken pain to decide so many matters regarding the validity or invalidity of compliance or non-compliance of the various statutory provisions under Section 13 of the Act. It is not a matter that has to be taken note of while determining the jurisdictional aspect of a civil court. So, I find

that the order passed by the learned Subordinate Judge suffers from serious infirmity and it is liable to be interfered with in the light of my discussions in the above paragraphs. I find that the civil court has no jurisdiction under Section 34 of the Act and therefore the suit is liable to be dismissed as not maintainable and I do so. Writ petition is disposed of accordingly.

M.N.KRISHNAN
Judge

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